SEP 13 1955
HAROLD B. WILLEY, C

No. 390

IN THE

Supreme Court of the United States

October Term, 1955

JOHN SYRES, LOUIS J. WARRICK AND LOCAL 254, OIL WORKERS INTERNATIONAL UNION, C. I. O.,
Petitioners

v.

OIL WORKERS INTERNATIONAL UNION, LOCAL #23, F. A. McDUFFIE, CHAIRMAN GULF MAIN PLANT GROUP AND GULF OIL CORPORATION, E. R. McADAMS, CHAIRMAN GULF WORKMEN'S COMMITTEE,
Respondents

PETITION FOR A WRIT OF CERTIORARI

to the United States Circuit Court of Appeals for the Fifth Circuit

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ERRATA

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Petitioners, John Syres, Louis J. Warrick and Local 254, Oil Workers International Union, C. I. O., pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on June 21, 1955.

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Petitioners, John Syres, Louis J. Warrick and Local 254, Oil Workers International Union, C. I. O., pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above entitled case on May 25, 1948.

Citations to Opinions Below

The memorandum opinion of the United States District Court for the Southern District of Texas is unreported

and is printed in the accompanying record certified by the Clerk of the U. S. Court of Appeals, Fifth Circuit (R. p. 14). The opinion of the Circuit Court of Appeals, Fifth Circuit is in the certified copy of the record, p. 25, has not yet been officially reported.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on June 21, 1955 (R. p. 43). Rehearing was denied on August 5, 1955 (R. p. 48). The jurisdiction of this Court is invoked under 28 *U.S.C.*, Section 1254 (1).

Questions Presented

Whether the consummation of a racially discriminatory collective agreement, by the exclusive representative of employees is such a breach of the statutory duty imposed by the National Labor Relations Act upon such representative as might be redressed by Negro union and/or non union members so harmed, by suit for injunctive relief and for damages.

Whether the cause of action alleged in the instant cause is within the exclusive original jurisdiction of the National Labor Relations Board so as to cause petitioners to exhaust their administrative remedies before the Board before resort to the Federal District Court?

Statutes Involved

The statutory provisions involved are The National Labor Relations Act, 29 *U.S.C.* 151 et seq.; 28 *U.S.C.* 1331. They are printed in Appendix A, infra, pp. 11-12.

Statement

Petitioners, John Syres, Louis J. Warrick, and Local 254, Oil Workers International Union, on May 25, 1954, filed their complaint against respondents Local 23, F. A. McDuffie, and E. R. McAdams and Gulf Oil Corporation (R. p. 2), alleging breach of the statutory duty imposed by the National Labor Relations Act by the negotiation, through conspiracy, of a racially discriminatory collective agreement of April 17, 1954. Petitioners prayed for a temporary restraining order, a temporary injunction, and a permanent injunction and damages on final hearing. The jurisdiction of the District Court was invoked pursuant to 28 *U.S.C.* 1131, as a suit in equity under the Constitution and laws of the United States, viz., the Fifth Amendment of the said Constitution and 28 *U.S.C.* 151 (159) et seq. Petitioners alleged that the said contract was discriminatory in that it contained one line of seniority for Negro employees and one line of seniority for white employees, contrary to an agreement previously reached by the two locals representing Negro and White employees at the Gulf Oil Corporation's Port Arthur Refinery. Said agreement being reached after a plan to amalgamate the Workmen's Committee (the union organ which negotiates contracts with Gulf) with representation being selected by vote of a joint meeting of both the unions, instead of, as previously, each union having a guaranteed representation, with each union selecting its representatives in closed meetings. Previous to the amalgamated Workmen's Committee, the bi-racial committee had negotiated only "one line" seniority collective agreements with Gulf. The amalgamated committee which was composed solely of white employees, members of Local 23, negotiated the two line seniority contract.

Local 23 and Gulf filed motions to dismiss and on August 19, 1954, the District Court filed its final order of dismissal, having previously denied petitioners' application for temporary relief, on the ground that the cause of action does not arise under the Constitution, laws or treaties of the United States, within the purview and meaning of Title 28 *U.S.C.*, Section 1331 (R. p. 19).

The Circuit Court of Appeals, Fifth Circuit, affirmed the action of the District Court, by an opinion filed June 21, 1955. However, one of the three judges sitting dissented in a written opinion (R. p. 36).

Reasons for Granting the Writ

1. There is a conflict between the decision of the Court below in the instant case and the cases of *Steele v. Louisville & N. R. Co.*, 323 U.S. 192, and *Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, et al.*, the majority decision in the instant case following *Williams v. Yellow Cab Co.*, 200 F. 2d 302.

This conflict with the two applicable aforementioned decisions of the Supreme Court is present because the decision in the instant case does not recognize the rule of law announced in the *Steele & Tunstall* Cases, Supra, that an exclusive bargaining agent under Federal Statute has a duty not to discriminate on account of race or color against any of the employees which it (the union) represents.

True, the instant Case involves the National Labor Relations Act and the *Steele & Tunstall* Cases, Supra, involved National Railway Labor Act, but it is believed that the rule announced by the Supreme Court in the latter Cases is equally applicable and of sufficient latitude to controlling here. This is so because of the substantial identity between

the sections of the National Railway Labor Act (45 *U.S.C.* 152 (Fourth) and the National Labor Relations Act (29 *U.S.C.* 159) which give rise to and express the powers of a representative selected by employees, and from which also by implication arise the duty incumbent upon the representative. The Supreme Court in the *Steele* Case, Supra, specifically recognized this substantial identity in these words:

> ". . . The use of the word 'representative', Sec. 2 fourth of the National Railway Labor Act (which is comparable to Section 159 of the National Labor Relations Act), as amended as thus defined . . . plainly implies that the representative is to act on behalf of all the employees which by virtue of the statute it undertakes to represent."

Following the *Williams* Case, however, the decision of the lower court has engrafted an exception upon the aforementioned rule, in conflict with the said rule as well as with the reasoning and general principles announced in the *Steele & Tunstall* Cases, Supra. This conflict seems to proceed from the premise, laid by the court in the *Williams* Case and followed by the court below, that the distinguishing factor between these two cases (i.e., the instant case and the *Williams* Case, Supra) and the *Steele & Tunstall* Cases is the fact that in the latter the complainants were Negro non-union members, whereas in the former the complainants are Negro union members. To seize upon this distinction as the basis for evolving a rule of law which would deny federal equitable relief to Negro union complainants who had been discriminated against, is in clear conflict with the rule of law as announced in the *Steele* Case, Supra, and contrary to much of the language therein. For the duty therein set forth, though implied, exists in favor of all employees

whom the union represents. The *Steele* Case plainly indicates that the duty is owed to *all* employees whom the union represents.

The distinction having been seized upon by the lower Court in this case, the Honorable Court then proceeded to establish the proposition, in conflict with the ruling in the *Steele* Case, that the negotiation of the discriminatory contract herein involved was not an exercise of authority contrary to the powers granted by the National Labor Relations Act, but was only the breach of a private agreement between the Negro and the white Local which was not cognizable in the Federal District Courts. But it would appear from the following language of the Supreme Court in the *Steele* Case that when the exclusive bargaining representative negotiates a contract it is acting pursuant to statutory granted powers which action may be the subject of judicial review on the complaint of either minority non-union members or minority union members. Quoting again from the *Steele* Case, there it is said:

> "... the statutory power to represent a craft and to make contracts as to wages, hours and working conditions does not include the authority to make among members of the craft discriminations not based on relevant differences. Here the discriminations based on race alone are obviously irrelevant and invidious. ... it (the act) does require the union to represent non-union or ***minority union*** members of the craft without hostile discrimination, fairly, impartially and in good faith."

The Court below held, in conflict with the above language, that the facts here involved do "not require an interpretation of the National Labor Relations Act or any other federal law," following in the wake of the language in the

Williams Case, which is also in conflict with the language in the *Steele* Case, which said, "The right of a labor union to engage in collective bargaining on behalf of its members is a right which was not conferred by the National Labor Relations Act. . . ."

The instant case is therefore clearly in conflict with the Supreme Court's prior determination that the National Labor Relations Act does grant the power to act as exclusive bargaining agent and its contrary conclusion is therefore clearly erroneous.

2. The question presented by the instant case is important because it involves the administration of the National Labor Relations Act, and a construction by the Supreme Court of the statutes relative to question or questions herein involved will be of great importance and significance to a major portion of industries engaged in interstate commerce in this Nation.

Though it is apparent that the decisions in the *Steele* and *Tunstall* Cases are applicable to the instant case it is nontheless important to the public welfare that the Supreme Court put at an end the question of whether minority union members may avail themselves of federal equity powers to redress racial discrimination practices by the exclusive bargaining agent. For admittedly, though the principles of law announced in the *Steele* Case are broad enough to cover the facts in this case, the petitioners in that case were non-union members. This difference has been thought significant by some courts (i.e. the courts in the instant case and in the *Williams* Case), but not by the dissenting judge in this case (R. p. 12), and it can only be settled by a decision from this Court.

The question to be decided is further important for the primary question to be decided is a procedural matter as to the jurisdiction of the Federal District Courts under 28 *U.S.C.* 1331.

It is likewise believed that the question presented is important for the reason that this will be the first decision of this character by the Supreme Court which involves the construction of the National Labor Relations Act, the *Steele* and *Tunstall* Cases having involved the construction of the National Railway Labor Act; and since the question is designed to specifically decide a question on facts somewhat different from the facts in the *Steele* Case, a decision by the Supreme Court in this case will serve to stabilize further interpretation and administration of both acts. Such a decision would have far reaching results in the clarification of the remaining, unsettled portion of the law relative to minority union members.

3. The second question set out is important because a decision by this court therein will affect a substantial number of employees employed in industries engaged in interstate commerce, in that it will determine whether those complaining of discrimination by a bargaining agent must first resort to the Board for relief.

It will be important to determine whether the pronouncement of the Board in certain cases [*Carter Manufacturing Co.*, 59 N.L.R.B. 804, 806 (1944); *General Motors Corporation*, 62 N.L.R.B. 427, 431 (1945); *Hughes Tool Company* Case,104 N.L.R.B. 318 (1953)], in which cases the Board indicated that it would revoke certification of any union if after an investigation the agent should be found guilty of discrimination against any of the employer whom it represents on account of race or color, has

the effect of depriving the federal district courts of jurisdiction.

Hence it would be important to decide whether minority non-union members must first ask for and be denied the remedy of revocation of certification.

It is further important to determine whether 29 *U.S.C.* 159 (b) of the National Labor Relations Act confers this Jurisdiction on the N.L.R.B.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

ROBERSON L. KING,
Counsel for Petitioners

Date: Aug 25, 1958